

Updates to Proposed Policy:

On Page 3, change Acronyms and Abbreviations as follows:

DPR Department of Pesticides Regulation

On Page 7, change Paragraph 1 of Geographic Area Covered by Policy as follows:

California is a large and geographically diverse state, covering 163,696 square miles, and spanning over 800 miles of coastline. California's multiple mountain ranges and valleys result in highly variable climate, precipitation and drainage patterns. To account for the state's size and geographic diversity, this Policy designates 14 Cannabis Cultivation Policy regions: Klamath, Upper Sacramento, North Eastern Desert, North Coast, Middle Sacramento, Southern Sacramento, North Central Coast, Tahoe, South Central Coast, San Joaquin, Mono, Kern, South Coast, and South Eastern Desert (Figure 1). This Policy establishes water quality and instream flow Requirements statewide. These include instream flow ~~requirements~~**Requirements** that must be met or exceeded at specific compliance flow gages when water is being diverted for cannabis cultivation. The Policy identifies 14 regions, and identifies nine regions as priority regions that support anadromous salmonids. The priority regions are: Klamath, Upper Sacramento, North Coast, Middle Sacramento, Southern Sacramento, North Central Coast, South Central Coast, San Joaquin, and South Coast.

On Page 9, change Paragraph 1 of Requirements for Cannabis Cultivation as follows:

The State Water Board developed these Requirements in consultation with CDFW and CDFA. The Requirements are divided into five main categories, which are located in the following sections of Attachment A:

- Section 1. General Requirements and Prohibitions, and Cannabis General Water Quality Certification
- Section 2. Requirements Related to ~~of~~ Water Diversions and Waste Discharge for Cannabis Cultivation
- Section 3. Numeric and Narrative Instream Flow Requirements (including Gaging)
- Section 4. Watershed Compliance Gage Assignments
- Section 5. Planning and Reporting

On Page 11, change the Top Paragraph as follows:

streamflow⁸. For the development of long-term instream flow requirements, the State Water Board, in consultation with CDFW, will evaluate other scientifically robust methods that are more reflective of regional variability and the needs of target species. The State Water Board applied the Tessmann Method to a predicted historical flow data set sourced from a flow modeling effort conducted by the United States Geological Survey (USGS) in cooperation with The Nature Conservancy and Trout Unlimited⁹ (USGS flow modeling data). The interim instream flow Requirements were calculated for compliance gages throughout the state. The Tessmann Method and the USGS flow modeling data allow for instream flow requirements to be calculated at additional compliance points throughout the state. This Policy allows the State Water Board to use the Tessmann

Method and the USGS flow modeling data to calculate or adjust a flow requirement, as needed, throughout the **State state**.

On Page 12, change Paragraph 1 of Compliance Gages and Requirements as follows:

Compliance gage assignments have been developed for all watershed areas ~~throughout the state within nine priority regions (see Figure 1, Cannabis Cultivation Policy Regional Boundaries)~~. Numeric instream flow Requirements are applied at a subset of existing gages reported on two websites: (1) the USGS – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). Watershed areas that do not have existing gages are assigned a compliance gage for a different location in the same watershed or for a nearby watershed with similar flow characteristics. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. Cannabis cultivators in watersheds without an assigned gage may be required to install a gage if information indicates that a gage is necessary to adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.

On Page 12, change Paragraph 2 of Compliance Gages and Requirements, as follows:

Many dams in California have existing instream flow requirements through the Federal Energy Regulatory Commission licensing program or through Biological Opinions issued by the National Marine Fisheries Service or the United States Fish and Wildlife Service, or through water right decisions. Cannabis cultivators shall comply with either existing instream flow Requirements (e.g. State Water Board Orders, Biological Opinions, Federal Energy Regulatory Commission Licensing Program) or the Tessmann instream flow Requirements, whichever is greater.

On Page 13, change Paragraph 2 of General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) section as follows:

Water Code section 13263(i) authorizes the State Water Board to prescribe general WDRs for a category of discharges if the State Water Board determines that all of the following criteria apply to the discharges in that category: the discharges are produced by the same or similar operations; the discharges involve the same or similar type of waste; the discharges require the same or similar treatment standards; and the discharges are more appropriately regulated under general WDRs than individual WDRs. Water Code section 13269 states that the State Water Board may conditionally waive the requirements to file a Report of Waste Discharge under Water Code section ~~13263(a)~~ 13260(a)(1) and/or ~~the requirements to~~ prescribe WDRs under Water Code section 13263(a) for a specific discharge or specific type of discharge where such a waiver is consistent with the applicable Regional Water Board Basin Plans and is in the public interest.

On Page 16, change Paragraph 2 of Conditional Exemption section as follows:

The conditional exemption does not alter any other legal requirements (e.g., limitations on sales, distribution, or donations of cannabis). Cultivation activities that are conditionally exempt under the General Order still require a valid basis of right for the diversion and use of water and therefore may still require a water right. The conditional exemption under the General Order does not affect the requirement to obtain authorization for water diversion. To obtain documentation of conditionally exempt status, such cannabis cultivators must submit application information under the Cannabis General Order. Refer to the Application Process and Fees section of the Cannabis General Order for information on the Cannabis General Order's application requirements.

On Page 19, change Paragraph 1 of CDFA's CalCannabis Cultivation Licensing Program section as follows:

In accordance with California Business and Professions Code (BPC) sections 26012, 26013, and 26060, CDFA is establishing a commercial cannabis cultivation licensing program. BPC section 26051.5(b)(7) requires the CDFA to consult with the State Water Board on the source or sources of water the applicant will use for cultivation. BPC section 26060.1(b)(1) requires that CDFA include conditions requested by the State Water Board in any license, including but not limited to the principles, guidelines, and **Requirements requirements** established under Section 13149 of the Water Code.

On Page 20, change Paragraph 1 of Enforcement section as follows:

Compliance with this Policy is mandatory to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Timely and appropriate enforcement is critical to ensure that cannabis cultivators enroll under the regulatory framework and anticipate, identify, and correct any violations. Enforcement action may be taken against cultivators who continue to grow cannabis in violation of state law and against cultivators who enroll in regulatory programs, but fail to fully comply with the Requirements. Appropriate penalties and other consequences for violations prevent cultivators that do not comply with the Requirements from obtaining an unfair competitive advantage and help ensure public confidence in the regulatory framework.

On Page 23, change Paragraph 1 of Cease and Desist Orders section as follows:

To remedy water quality violations, a Regional Water Board or the State Water Board may issue a Cease and Desist Order (CDO) against the discharger. The State Water Board also may issue a CDO for water rights violations. In addition to ~~the its~~ general authority to issue CDOs, the State Water Board has specific legal authority to issue a CDO against any unlawful diversion or discharge for cannabis cultivation, any diversion or discharge that violates this Policy, and any cultivation activity that violates other applicable requirements that protect the environment.

Updates to Proposed Policy – Attachment A:

On Page 16 of the Policy – Attachment A, Section 1, change Term No. 3 as follows:

The cannabis cultivator shall **apply for a Lake and Streambed Alteration Agreement (LSA Agreement) or** consult with CDFW to determine if a ~~Lake and Streambed Alteration Agreement~~ (LSA Agreement) is needed prior to commencing any activity that may substantially:

- divert or obstruct the natural flow of any river, stream, or lake;
- change or use any material from the bed, channel, or bank of any river, stream, or lake; or
- deposit debris, waste, or other materials that could pass into any river stream or lake.

“Any river, stream or lake,” as defined by CDFW, includes those that are episodic (they are dry for periods of time) as well as those that are perennial (they flow year round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

On Page 25 of the Policy – Attachment A, General Requirements and Prohibitions, General Water Quality Certification, change the first paragraph to read:

For the purposes of section 401 of the Clean Water Act , the~~The~~ State Water Board certifies that cannabis cultivation activities in compliance with the conditions of the Policy and General Order will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, subject to the following additional terms and conditions:

On pages 40-41 of the Policy – Attachment A, Section 2, change Requirement 84 as follows:

The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. The measuring device shall be, at a minimum equivalent to the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7¹⁷. The measuring device(s) shall be located as close to the point of diversion as reasonable. Cannabis cultivators shall maintain ~~records of daily diversion~~ **records for water diverted for cannabis cultivation.** **Cannabis cultivators shall maintain** with separate records that document the amount of water used for cannabis cultivation separated out from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water Boards CDFW, or any other authorized representatives of the Water Boards or CDFW. Daily diversion records shall be retained for a minimum of five years. **Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.**

On Page 50-51 of the Policy – Attachment A, Section 3, change Narrative Instream Flow Requirements No. 4 as follows:

4. **Surface Water Dry Season Forbearance Period:** Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year, unless the water diverted is delivered from storage in compliance with Narrative Flow Requirement 4.
- a. The following requirements apply only to cannabis cultivators diverting under a valid ~~riparian or pre-1914 appropriative~~ water right or claim of right and without authorized storage:
 - i. The first year of the Surface Water Dry Season Forbearance Period (April 1, 2018 through October 31, 2018) is waived. Cannabis cultivators subject to Requirement 4.a. may only divert during this period in a manner consistent with their permit/license or claim of right. All other applicable requirements of the Policy shall remain in force.
 - ii. Cannabis cultivators subject to Requirement 4.a shall file for a Cannabis SIUR or submit an application for an appropriative water right permit to obtain storage sufficient to support their cannabis cultivation during the forbearance period prior to diverting water for cannabis cultivation during the 2018 forbearance period.
 - iii. As soon as possible after storage has been authorized, following the conclusion of the winter period, cannabis cultivators subject to Requirement 4.a shall begin installing and diverting to off-stream storage to prepare for a potential curtailment during the dry season of 2018 (triggered by the Aquatic Base Flow Numeric Instream Flow Requirement).
 - iv. Requirement 4 shall apply with full force to cannabis cultivators described in Requirement 4.a who fail to comply with Requirement 4.a.ii and/or 4.a.iii.

On Page 52 of the Policy – Attachment A, Section 3, change Paragraph 1 of Gage Installation, Maintenance, and Operation Requirements as follows:

The Deputy Director for Water Rights (Deputy Director) may assign a new compliance gage or require cannabis cultivators to install and operate a local telemetry gage in ungaged watersheds or localized watershed areas if the Deputy Director determines that use of the assigned compliance gage does not adequately protect instream flows or does not adequately represent the localized water demand. ~~The Deputy Director may also require the installation and operation of a local telemetry gage in watersheds with no gage assignment if the Deputy Director determines that a gage is necessary to adequately protect instream flows.~~

Updates to Proposed Policy Staff Report:

On Page 4 of the Policy Staff Report, change Acronyms and Abbreviations as follows:

DPR Department of Pesticides Regulation